

1           Q     Who took part in the decision of the delay in this  
2     payment of this retainage?

3                     MR. WOMMACK: Object to the form of the  
4     question.

5           A     When we got to the -- when we got to the point that  
6     the -- that the contractor had made a number of very, very  
7     large claims, the decision -- I don't know how to answer  
8     that question, sir.

9           Q     (By Mr. Roberts) Well, did you ever talk with  
10    anybody else about it?

11          A     Yes, sir. I talked to my immediate supervisor  
12    about it. I talked to the engineer about it.

13          Q     What did y'all talk about?

14          A     We discussed to try to go ahead, like that, and pay  
15    the contractor, like that, and -- and look over all the  
16    claims and feel which ones were reasonable and which ones  
17    were not.

18          Q     And did you go ahead and pay the contractor?

19          A     We -- eventually we paid the contractor, yes, sir.

20          Q     And that's after the 11 months we're talking about?

21          A     Yes, sir.

22          Q     Did you talk with anybody else during that 11  
23    months?

24          A     I talked with legal counsel.

25          Q     Okay. I'm not asking you about that. Anybody

1 else?

2 A Other than the staff at the Port, I believe that  
3 was probably about the end -- about the limit of the  
4 conversations.

5 Q Okay. Are you familiar with Change Order No. 9?

6 A Yes, sir.

7 Q On -- on that one, was that presented to the board?

8 A On two occasions, yes, sir.

9 Q When was the first occasion that it was presented  
10 to the board?

11 A I don't remember the exact dates.

12 Q Okay.

13 MR. ROBERTS: Let's go ahead and mark this  
14 purchase order right here as our next exhibit number. What  
15 are we up to? Eight?

16 (Plaintiff's Exhibit No. 8 was marked for  
17 identification.)

18 Q (By Mr. Roberts) That change order that you're  
19 looking at there in front of you, marked Deposition Exhibit  
20 No. 8 to your deposition, appears to me to be a purchase  
21 order from RLB Contracting to the Port for an amount of  
22 money of \$89,838 from the Port of Freeport, actually a  
23 purchase order to, I guess, cut a check.

24 Is that what that's for?

25 A Yes, sir.



1 Q And that purchase order was not to exceed how much  
2 money?

3 A Eighty-nine thousand eight hundred and thirty-eight  
4 dollars.

5 Q And when was that approved by the board?

6 A It was approved first time on July 23rd, 2009.

7 Q Do you know why it wasn't presented to the  
8 contractor until 68 days later?

9 A I can't answer that. I don't know.

10 Q What happens to it when it leaves that board  
11 meeting?

12 A The board approves it. Then I go ahead and issue a  
13 purchase order or a request shown by my signature. It is  
14 signed off by either the accounting supervisor or the  
15 managing director after the board has approved it. And then  
16 from there, it's normally transmitted to the strictly --  
17 directly to the contractor by the Port.

18 In this case here, it was transmitted by legal counsel  
19 to RLB Contracting.

20 Q Okay. Why did you decide to pay this money on this  
21 day to RLB Contracting?

22 A After going back with the engineer and reviewing to  
23 make sure we had all of our numbers correct on what the  
24 contractor we felt he was due any funds that were not in --  
25 in -- in contention, as far as the amounts and so on, we

1 found that there was the one piece of work that was done  
2 fairly early on in the project that the Port, the engineer,  
3 and the contractor had agreed to a price to; and it had  
4 never gotten included on a prior change order, and this was  
5 to go ahead and excavate some soft material and to backfill  
6 it with dryer material. And this was paid based on the  
7 agreed-upon-unit price of twice the bid price for the  
8 excavation of material.

9 Q And was that change order executed by the  
10 contractor?

11 A This one? Not to my knowledge, it hasn't been, no,  
12 sir.

13 Q So, the -- the purchase orders come out even before  
14 the change orders approve -- are shown to the contractor?

15 A We normally go ahead and have the board approve the  
16 change order, and then we send it to the engineer for his  
17 signature; or in some cases, the engineer signs it before  
18 him, and then we send it to the contractor with the purchase  
19 order -- with a copy of the purchase order.

20 Q Has this one ever been given to the contractor?

21 A I think it's been given to the contractor, I  
22 believe, on two different occasions.

23 Q Okay. And why hasn't that been paid to your  
24 understanding?

25 A The contractor refused the language in the change

1 order to my understanding.

2 Q And that language had to do with the number of  
3 days?

4 A It had to do with the number of --

5 MR. WOMMACK: Objection.

6 THE WITNESS: Excuse me. I'm sorry.

7 MR. WOMMACK: Objection to the form of the  
8 question.

9 A It had -- it was -- it was rejected by the  
10 contractor for a number of reasons.

11 Q (By Mr. Roberts) Okay. Have y'all agreed on Change  
12 Order No. 9 to the requested changes by the contractor?

13 A I believe we have.

14 Q Then why hasn't the \$89,838 been paid?

15 A Because the last form of the change order that I  
16 had approved by the board was not the change order that was  
17 -- that was agreed to by the two offices of counsel: Namely  
18 yourself and our counsel.

19 Q All right. And if that's been agreed to, why  
20 hasn't it been paid?

21 MR. WOMMACK: Objection to the form of the  
22 question.

23 A That is basically a project for me to do this week,  
24 is to go ahead and rewrite that change order with the  
25 language that's agreeable to both offices of counsel so that

1 we can get it processed, and we can get the check.

2 Q (By Mr. Roberts) Have you communicated that to --  
3 oh, well, you don't communicate anymore with the contractor.

4 A No, sir.

5 Q Okay. Have you ever been in business for yourself?

6 A No, sir.

7 Q On the failure to pay the retainage and to approve  
8 change orders, does that have an affect on the cash flow of  
9 a contractor?

10 MR. WOMMACK: I'm going to object to the form  
11 of the question.

12 A I would assume that it does. I don't know.

13 Q (By Mr. Roberts) Well, does that make any  
14 difference to y'all?

15 MR. WOMMACK: Object to the form of the  
16 question.

17 A I have tried my 27 years at the Port to try to go  
18 ahead and pay the contractor what is due on time.

19 Q (By Mr. Roberts) Is this the first exception where  
20 you've held retainage for 11 months?

21 MR. WOMMACK: I'm going to object to the form  
22 of the question. Go ahead.

23 A Where we have not been in litigation, I don't  
24 believe that we have ever held a retainage for this length  
25 of time, no, sir.

1           Q     (By Mr. Roberts) So, it's because he has a claim on  
2     some work that's the subject to the claim that you haven't  
3     paid this retainage? Is that what you're saying?

4                     MR. WOMMACK: Object to the form of the  
5     question.

6           A     No, sir.

7           Q     (By Mr. Roberts) Okay. Very simply: Why haven't  
8     you paid it?

9           A     It's my understanding we've paid it. Why did it  
10    take 11 months to pay it? I can't answer that.

11          Q     Okay. And the 89,000 you're going to be paying  
12    here pretty quick?

13          A     Yes, sir.

14          Q     And the only thing left on that change order that  
15    you know about is the number of days to be awarded for the  
16    89,838 days worth of work?

17                     MR. WOMMACK: I object to the form of the  
18    question.

19          A     Right now, from what I understand, the contractor  
20    has -- has put a request in for a certain extension of time.  
21    We do not agree with that; and in talking to the engineer,  
22    there may not be any extension of time.

23          Q     (By Mr. Roberts) In conjunction with \$89,838 worth  
24    of work?

25          A     That's correct.

1           Q     Do you know how long that agreement has been in  
2     affect of how to change that change order?

3                   MR. WOMMACK: Object to the form of the  
4     question.

5           A     The agreement as far as Change Order No. 9?

6           Q     Yes, sir.

7           A     I think it's been a couple of months.

8           Q     And for a couple of months, where has it been  
9     sitting?

10          A     I just found -- I just found out, I think last  
11     week, that I had to go back in and change the language and  
12     re-issue the change order.

13          Q     And will that have to then wait to go before a  
14     board meeting?

15          A     Not to my knowledge. It'll be -- the decision will  
16     have to talk to -- talk to counsel. If it's a material and  
17     significant change, it may require board action. I do not  
18     believe that it does, but I can't say that as a fact.

19          Q     Okay. So, you distinguish on what you have to go  
20     to the board with on how you classify something as material  
21     and significant or not material and significant?

22          A     No, sir. The change order is dependent upon the  
23     amount, the type of change order. In some cases, if we have  
24     to go back and change the language on the change order, if  
25     it's -- if it's the opinion of counsel it's material and

1       significant, and it's his recommendation to take it back to  
2       the board after -- after it's been revised, then I take it  
3       back to the board.

4           Q     Now who's the "him" in that?

5           A     Legal counsel.

6           Q     Okay. That's what I thought you said. So, your  
7       lawyer makes the decision.

8                   MR. WOMMACK: Object to the form of the  
9       question, if that is one.

10          A     The attorney is consulted; and he if feels it is a  
11       material and significant change, then we take it back to the  
12       board for their approval.

13          Q     (By Mr. Roberts) And even though it's been, I think  
14       your words were, a couple of months, there still hasn't been  
15       any check cut as we sit here today?

16                   MR. WOMMACK: Object to the form of the  
17       question.

18          A     I believe the check has been cut.

19          Q     (By Mr. Roberts) Okay. What's holding up mailing  
20       the check?

21                   MR. WOMMACK: Object to the form of the  
22       question.

23          A     I've already asked and answered it, but I'll answer  
24       it again like that. I have to go back and change the  
25       language on the change order because the language that was

1 approved by the board was not the language that was approved  
2 by both offices of counsel.

3 Q (By Mr. Roberts) And that, then, is the Port's  
4 fault; not the contractor's fault?

5 MR. WOMMACK: Object to the form of the  
6 question.

7 Q (By Mr. Roberts) Which is it?

8 MR. WOMMACK: I guess I'm going to object to  
9 that second question.

10 A I would have to go back and revise the form because  
11 the form that I took to the board I understood to be the  
12 corrected form, and it was not.

13 Q (By Mr. Roberts) But you still don't know if you  
14 have to go back to the board, as we sit here today?

15 A I don't believe we have to, but it's not going to  
16 be my decision.

17 Q Okay. And that will be left up to legal counsel.

18 MR. WOMMACK: Object to the form of the  
19 question.

20 A Counsel and senior management. Excuse me.

21 Q (By Mr. Roberts) And if you have to go back to the  
22 board, when does the board meet again?

23 A The board normally meets on the fourth Thursday of  
24 the month.

25 Q So, are y'all going to meet tomorrow?



1 A Yes, sir.

2 Q Do you have any intentions of presenting this to  
3 the board tomorrow?

4 A No, sir.

5 Q So, this is a couple of months. So, we're going to  
6 be at least another month if it has to go to the board?

7 MR. WOMMACK: Object to the form of the  
8 question.

9 A In order to get it on the board agenda, we have to  
10 post 72-hour notice. So, it would be the February board  
11 meeting.

12 Q (By Mr. Roberts) Do you think that's a fair way to  
13 treat a contractor?

14 MR. WOMMACK: Object to the form of the  
15 question.

16 A I don't think it's my decision whether it's to be  
17 fair or not -- I mean, that's -- that's -- I just -- I don't  
18 know how to answer that question. I'm sorry.

19 Q (By Mr. Roberts) Okay. You're familiar with the  
20 term "critical path," aren't you?

21 A Yes, sir.

22 Q Was the drying of the dirt part of the critical  
23 path of this project?

24 A Yes, sir.

25 Q And excavation of the dirt is part of the critical

1 path of this contract?

2 A Yes, sir.

3 Q And the critical path was altered by increasing the  
4 amount of the dirt by over 43,000-cubic yards?

5 MR. WOMMACK: Object to the form of the  
6 question.

7 A It would increase the amount of time it would take  
8 for him to do the contract, yes, sir.

9 Q (By Mr. Roberts) That's my next question. So, I'll  
10 check that off.

11 Did you think it's -- I've asked you if you thought it  
12 was fair. I believe you told me you never asked the  
13 contractor for a breakdown of his lump-sum bid?

14 A That's correct.

15 Q How would one calculate the GNA on one of these  
16 items if you didn't have that?

17 MR. WOMMACK: Object to the form of the  
18 question.

19 A The general conditions outline what the  
20 subcontractor can put in for markup for overhead and what  
21 the general contractor can put in for markup on overhead,  
22 what's allowable.

23 Q (By Mr. Roberts) Well, isn't that a global amount  
24 as opposed to on each and every particular item in there?

25 MR. WOMMACK: Object to the form of the

1 question.

2 A That is a global amount, yes.

3 Q (By Mr. Roberts) And is it industry standard to  
4 spread that equally over each one?

5 A I don't know if it's industry standard or not, but  
6 that's normally what I've seen and normally what, in talking  
7 to other contractors, what they've done.

8 Q It wouldn't be based upon the money in a particular  
9 item?

10 A When I do -- when I do -- when I do estimates, and  
11 I put in for overhead and profit, I take a percent of the  
12 subtotal of all of the contractors and subcontractor's cost.

13 Q Exactly my point. So, if you had a breakdown on  
14 all of these, you could better calculate the GNA?

15 A If I had the breakdown?

16 Q Yes, sir.

17 A Probably could.

18 Q Do you think that if he testifies that he used his  
19 numbers from his GNA, that that would be more accurate than  
20 your numbers?

21 MR. WOMMACK: Object to the form of the  
22 question.

23 A I don't know how to answer that one either, sir.

24 Q (By Mr. Roberts) You really don't?

25 A No, sir.

1 Q Under oath sitting here today?

2 A I don't understand from what -- the conversation I  
3 had with the contractor, he did not uniformly spread his, as  
4 you call it GNA, what I call overhead and profit, equally  
5 throughout the bid items.

6 Q When did you first understand that RLB was filing a  
7 claim on your requirement to stockpile the material?

8 A I don't remember the exact date.

9 Q Pretty quick, though, wasn't it?

10 A I don't remember the exact date.

11 Q Do you think there's any problem with notice that  
12 he was planning on doing that?

13 A I haven't -- I didn't go back and look at the claim  
14 to look at the contract to see if he filed a claim in  
15 accordance with the times specified in the contract, times  
16 and procedures.

17 Q Now, did you get copies of all the claims?

18 A I believe I did, yes, sir.

19 Q And in the capacity of the Port?

20 A Yes.

21 Q As the owner?

22 A Yes, sir.

23 Q During the periods of time that the project was  
24 shutdown -- was stopped from using lime -- let me use that  
25 word -- did you, at any point in time, realize that Randy

1       was going -- or RLB Contracting was going to file a claim  
2       before you lifted the prohibition against using lime?

3           A     I don't believe so, no, sir.

4           Q     Okay. How about the guys that work for you? None  
5       of them had ever mentioned anything about that?

6           A     Not to my knowledge, no, sir.

7           Q     Do you think there was a point in time when you  
8       didn't know that the -- that RLB Contracting was going to  
9       file a claim over this matter after you stopped the use of  
10      lime?

11                   MR. WOMMACK: Object to the form of the  
12      question.

13          Q     (By Mr. Roberts) I think that's what I've heard you  
14      say.

15          A     Can you ask it again. I'm sorry.

16          Q     Yeah. I'm trying to figure out when you became  
17      aware that they were going to file a claim.

18          A     When I received a copy of the claim.

19          Q     And you had no indication of that prior to  
20      receiving that claim?

21          A     Well, I had no indication. I had -- I had some  
22      assumptions in my own head, but that was it. Nothing --  
23      nothing based on fact.

24          Q     And why would you have those assumptions in your  
25      head? What kind of assumptions are you talking about?

1           A     I just assumed that -- that the contractor had felt  
2           that -- that he had been -- he had been delayed, and it had  
3           cost him additional costs.

4           Q     Okay. And when did you have those thoughts?  
5           Before you lifted the prohibition on the use of lime or  
6           after?

7           A     We did not lift the prohibition on lime. We  
8           basically told him to stop using lime as long as he was  
9           causing a health hazard to adjacent property owner.

10          About 25 days after that happened, we had a meeting, and  
11          I sat right next to Mr. Boyd, and I told him the same thing.  
12          I said, "We didn't tell you that you couldn't use lime. We  
13          told you we couldn't use lime and cause a health hazard to  
14          an adjacent property owner. And they immediately proceeded  
15          to go ahead and start using lime.

16          Q     What does the engineer say they were advised about  
17          pelletized lime on May 1st, 2008 when he writes the report  
18          to you as Director of Engineering in response to a contract  
19          comment in Paragraph 3?

20                   MR. WOMMACK: I object to the form of the  
21          question.

22          A     This is a letter from the engineer to myself. And  
23          they say that they were advised not to use pelletized lime,  
24          to stockpile material too wet to compact until it could be  
25          worked. And the reason that that was done was we were

1       trying to find some other way to go ahead like that and  
2       complete this project because the contractor's  
3       superintendent told us he could not put down pelletized lime  
4       without causing dust. And the response was: Stockpile the  
5       material until we could get this thing worked out.

6           Q       (By Mr. Roberts) And did you then -- I'll ask you  
7       again under oath here today.

8           Did y'all stop the contractor from using pelletized  
9       lime?

10          A       We stopped the contractor from using pelletized  
11       lime and instructed until he could find a way to put down  
12       pelletized lime without causing a health hazard to an  
13       adjacent property owner.

14          Q       Now, when did -- did you just add all of that to  
15       what the engineer's saying that they were advised?

16          A       No. This is what I told --

17                   MR. WOMMACK: I object -- object to the form  
18       of the question.

19          A       This is what I told Mr. Boyd when -- when we had a  
20       meeting somewhere to the latter part of April.

21          Q       (By Mr. Roberts) Okay. Where is that directive?

22          A       That directive was not --

23                   MR. WOMMACK: Excuse me. Object to the form  
24       of the question.

25          Q       (By Mr. Roberts) Go ahead.

1           A     This -- this here says, lead to the April 4th, 2008  
2     directive to cease using the lime.

3           In my opinion, this is only half of it. "Cease using  
4     lime" because he was -- until he could find a way to keep  
5     from causing the health hazard to adjacent property owner.  
6     I put down enough lime, but it can be done. The contractor  
7     told us he could not do it, his superintendent, for whatever  
8     reason.

9           Q     Now, you weren't even in town when he was told to  
10    stop using lime, were you?

11          A     No, sir, I was not. I was out of town on business.

12          Q     So, when he was told to stop using lime, according  
13    to the engineer, and according to the prior testimony, we  
14    haven't seen any of this language that you were just talking  
15    about: Until such time as you can quit getting it on the  
16    adjoining neighbor.

17                   MR. WOMMACK: Objection to form of the  
18    question.

19          Q     (By Mr. Roberts) Is that correct?

20                   MR. WOMMACK: Objection to the form of the  
21    question.

22          A     Shortly after he was instructed to stop using lime,  
23    the report I received from my people in the field was that  
24    there was a meeting held between the engineer, my  
25    representatives in the field, and the contractor's



1 representative, the superintendent. And the superintendent  
2 made the statement he could not put down the lime without  
3 causing a dust cloud.

4 Q (By Mr. Roberts) But the directive had already been  
5 issued, hadn't it?

6 A The directive was in response to the health hazard  
7 he was causing to an adjacent property owner.

8 Q I understand that. But the directive was there.  
9 You told me earlier that there wasn't a directive to stop  
10 using lime.

11 A According to this letter there was a directive,  
12 yes, sir.

13 Q And that would have been the people that were  
14 there --

15 MR. WOMMACK: Well, object.

16 Q (By Mr. Roberts) -- is that correct? Would he have  
17 been on the site?

18 MR. WOMMACK: Objection to the form of the  
19 question.

20 Q (By Mr. Roberts) Tibedeaux.

21 MR. WOMMACK: I don't think Tibedeaux was at  
22 that meeting.

23 Q (By Mr. Roberts) How about Don Cheline? You heard  
24 his testimony.

25 A Yes, sir, I heard his testimony.

1           Q     Didn't he testify that they were instructed not to  
2     use lime and to stockpile the material?

3                   MR. WOMMACK:  Objection to the form of the  
4     question.

5           A     They were instructed not to use lime because of --  
6     because of the problems they were causing, the health hazard  
7     they were causing to an adjacent property owner.

8           Now, whether they were instructed to stop using lime and  
9     stockpile, whether that directive was given at the same  
10    time, I don't recall.  Or if the -- or if the directive to  
11    stockpile the material was in response to the contractor's  
12    response that he could not place the lime without causing a  
13    dust cloud.

14          Q     Okay.  I believe we talked about earlier September  
15    25th, 2007 Progress Meeting Agenda, but I believe it was  
16    Mr. Cheline's deposition.

17                   MR. ROBERTS:  So I'll ask the court reporter  
18    to mark this as our Exhibit No. 9.

19                   MR. WOMMACK:  What was 8?

20                   (Plaintiff's Exhibit No. 9 was marked for  
21    identification.)

22                   MR. ROBERTS:  Eight was that purchase order --

23                   THE WITNESS:  Purchase order.

24          Q     (By Mr. Roberts) Have you ever seen that before?

25          A     Yes, sir.

1           Q     Could you tell us whose handwriting that is on  
2           there?

3           A     It's my handwriting.

4           Q     And in your handwriting, would you tell us what is  
5           down at the bottom in your handwriting, after the four  
6           bullet points, on Paragraph 4: Review construction  
7           schedule?

8           A     That was a personal comment that I picked up from  
9           the conversation when that item was discussed.

10          Q     Had that -- that item was discussed, and the  
11          substance of the discussion was what?

12          A     We were trying to find some way or talking --  
13          talking conversation with the contractor to find some way to  
14          get back to the -- to the -- to the hauling of 4,000-cubic  
15          yards per day, which he had not met to -- met -- met -- met  
16          to date to meet the 180-calendar-day schedule.

17          Q     Okay. So there must have been some discussion  
18          about additional equipment?

19          A     Yes, sir.

20          Q     Kind of seems logical to me that if you put more  
21          equipment that you might get it done faster, but it seems  
22          like this comment indicates just the opposite; is that  
23          correct?

24                   MR. WOMMACK: Object to the form of the  
25          question.

1           A     The indication we received -- the indication that  
2     we got, and the reason I think I made this note on here was  
3     that the contractor felt that -- with the area he had to  
4     work in, that he could not -- that additional equipment  
5     would not increase his production rate.

6           Q     (By Mr. Roberts) Are you aware of the way that they  
7     were working around in the areas that they were putting the  
8     lime down?

9           A     Yes, sir. They were working in four different --  
10    we had four different areas out there that we had identified  
11    to place material.

12          Q     And those areas, when they first dumped it, do you  
13    know how long it took before they actually put the lime in  
14    it?

15          A     No, sir, I don't know.

16          Q     Okay. Have you ever heard that they were working  
17    in a circular motion, working towards this product in a  
18    round-type way?

19          A     I don't know if the plan was to go ahead and work  
20    in a circular motion of Areas 1, 2, 3, 4 and then go back to  
21    1. I knew some areas required a substantial large amount of  
22    fill than other areas. And some areas they had -- as a  
23    matter of fact, some areas they had excavated to make rather  
24    than -- rather than fill.

25          Q     Well, let me -- let me just talk about, for the

1       folks on the jury, just kind of how this works.

2               When a dump truck shows up, what does it do?

3               A     He's basically taking material from the area being  
4       excavated to areas that are being filled and placing the  
5       material.

6               Q     And when he gets there, is it -- is it correct that  
7       he dumps it?

8               A     Correct.

9               Q     And when he dumps it, does somebody have to come  
10      along behind that and spread it?

11              A     Yes, sir.

12              A     And when they're spreading it out like that, does  
13      somebody else have to come along, then, and work in the  
14      lime?

15              A     Maybe not somebody else. Maybe the same crew.

16              Q     Okay. Different piece of equipment, though?

17              A     Initially, no. Initially they were spreading the  
18      lime with the dozer.

19              Q     And if it gets too wet, then they may even have to  
20      wait a little bit to get on it; is that correct?

21              A     That's probable.

22              Q     Are you familiar with the fact that in the cycle of  
23      working this particular dirt, that the contractor was  
24      getting on the dirt about as fast as they could the whole  
25      time?

1 MR. WOMMACK: Objection to the form of the  
2 question.

3 A I can't say that for a fact.

4 Q (By Mr. Roberts) Can't say one way or the other?

5 A I can't say that for a fact. I was not on the site  
6 everyday.

7 Q Okay. Are you familiar with -- in observing the  
8 means and methods of how they were going about  
9 systematically doing this, if you had to describe it to the  
10 folks on the jury?

11 A Basically you've already described the means and  
12 methods of how they were placing it.

13 Q Okay.

14 MR. ROBERTS: Is that your true two or your  
15 five? Thank you.

16 Q (By Mr. Roberts) How long have you known Randy  
17 Boyd?

18 A Twenty-seven years.

19 Q Okay. How many jobs have you, say, you've worked  
20 together with him on?

21 A This is the first job I think I worked on with RLB.  
22 But it's probably the -- we've probably worked together on  
23 at least a half dozen other projects.

24 Q And would those have been when he was working for  
25 his grandfather's company, King Fisher Marine Service?

1 A Yes, sir.

2 Q Is this the first time you've ever had a claim on a  
3 job that Randy's been involved in with you for work that  
4 Randy was performing?

5 MR. WOMMACK: Objection to the form of the  
6 question.

7 A Yes, sir.

8 Q (By Mr. Roberts) How would you generally describe  
9 their work ethic and their work?

10 A Aside from this project here, the other projects  
11 that we had went fairly well. We had some minor problems.

12 Q But they got corrected? And any other minor  
13 problems you're talking about?

14 A It was different -- different -- different types of  
15 projects than this one.

16 Q Okay. Have you ever called Randy to discuss this  
17 matter, about the problems when they got into a claim?

18 MR. WOMMACK: Excuse me. Object to the form  
19 of the question.

20 A I don't know if I had any -- if I've called Randy  
21 since we had these claims -- some of these claims were  
22 filed. I don't believe I have.

23 Q Okay. Once a claim is filed, is it your policy,  
24 pre-litigation, to try and talk to the contractor and see if  
25 you can work it out?

1 A Oh, yes, sir.

2 Q Did you do that in this case?

3 A Yes, sir.

4 Q All right. Tell me about what you did in that  
5 regard.

6 A We sat down with the engineer. We went through --  
7 with the engineer and the contractor, and went through all  
8 of the different claims that we had to date, and I had -- I  
9 had my indication of what it would take to settle it. The  
10 contractor had his. We, in some cases, had come up with  
11 equitable -- what I felt an equitable-dollar figure.

12 MR. ROBERTS: Okay. We're going to have to  
13 stop right here, and then we'll come back and finish this.

14 THE VIDEOGRAPHER: We're off the record at  
15 5:01. End of Tape 3.

16 (Recess from 5:01 p.m. to 5:20 p.m.)

17 THE VIDEOGRAPHER: On the record at 5:20.  
18 Tape 4.

19 (Plaintiff's Exhibit No. 10 was marked for  
20 identification.)

21 Q (By Mr. Roberts) When I asked you earlier about the  
22 statute that we were talking about on hazardous waste, was  
23 today the first time you've ever read that statute?

24 A The U.S.C.?

25 Q Forty-two U.S.C. A 6903.



1           A     I think it was. I don't remember. I might have  
2           seen it before. We've been dealing with some hazardous  
3           materials on some other projects.

4           Q     But you didn't see it in conjunction with any work  
5           that RLB was --

6           A     On this project, no, sir.

7           Q     And you didn't consult it?

8           A     No.

9           Q     Now, I want to show you what has been marked as  
10          Exhibit No. 10 to your deposition. It's a memorandum from  
11          CH2M Hill, Port Freeport, Berth 7 - Site Civil Claim.

12          Have you ever seen this?

13          A     I believe I have, yes.

14          Q     This is the engineer's evaluation of a claim on  
15          Page 2. Do you see that paragraph?

16          A     Uh-huh.

17          Q     In the recommendation of the engineer's evaluation  
18          of the claim, in the short paragraph, right before he gets  
19          into methodology, what is the recommendation of the  
20          engineering company that is the consultant to the Port that  
21          was involved in this project?

22                   MR. WOMMACK: Objection, form of the question.

23          Q     (By Mr. Roberts) And I'm referring to that last  
24          sentence before methodology.

25          A     That's the opinion of Mr. Jeff Ely.

1           Q     Well -- let me -- let me just ask you. There's  
2     been a little change in the name of the engineering company  
3     from the time that they started out here until the end of  
4     this project; is that correct?

5           A     Yes, sir.

6           Q     And that's because Goldston Engineering, an  
7     engineering company that we've seen a number of  
8     correspondences from, back and forth, and memos and other  
9     things from, and who Mr. Thibeaux worked for for awhile, was  
10    acquired by CH2M Hill; is that correct?

11          A     That's correct.

12          Q     And that didn't change anything except who that  
13    engineer worked for from your perspective, did it?

14          A     That's correct.

15          Q     And what was their evaluation -- or his evaluation  
16    in this after he did the evaluation of the claim, as set  
17    forth? Would you read to the folks on the jury that  
18    sentence there?

19          A     Which sentence?

20          Q     Right before "methodology."

21                         MR. WOMMACK: Object to the form of the  
22    question.

23          A     "As I mention, this is Mr. Ely's opinion. As such,  
24    the contractor's basis for claim is sound and a change order  
25    should be negotiated."

1           Q     (By Mr. Roberts) I take it that you disagree with  
2     that?

3           A     This was an unsolicited recommend -- unsolicited  
4     memorandum from -- from Jeff Ely of CH2M Hill.

5           Q     Would your own engineering firm that you were  
6     writing checks to and paying to do work on the project?

7           A     This was an unsolicited memorandum from Mr. Jeff  
8     Ely.

9           Q     You've said that before. I want to make it very  
10    clear. This is Mr. Thibeaux's company at this point in  
11    time; is that correct?

12          A     Mr. Thibeaux works for this company. That's all.

13          Q     I understand.

14                   MR. WOMMACK: I object to the form of the  
15    question.

16          Q     (By Mr. Roberts) They acquired Goldston.

17          A     Correct.

18          Q     But Mr. Thibeaux would have been working for them  
19    at this time?

20          A     Yes.

21          Q     And this went to William Goldston and Jerry  
22    Thibeaux from Jeff Ely?

23          A     Correct.

24          Q     Do you know Jeff Ely?

25          A     Yes, I've met him on a couple of occasions.

1 Q What is your understanding of his position?

2 A I'm not sure what his position is; but company, I  
3 believe -- I'm not sure if Jerry Thibeaux and Joseph  
4 Scarborough answer to him or not.

5 MR. ROBERTS: I think that's all I have.

6 MR. WOMMACK: Port Freeport will reserve their  
7 questions until the time of trial.

8 THE VIDEOGRAPHER: End this deposition at 5:26  
9 p.m. End of Tape 4.

10 (Deposition concluded)

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## CHANGES AND SIGNATURE

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WITNESS NAME: \_\_\_\_\_ DATE OF DEPOSITION: \_\_\_\_\_

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PAGE	LINE	CHANGE	REASON
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1 I, DAVID M. KNUCKEY, have read the foregoing  
2 deposition and hereby fix my signature that same is true and  
3 correct, except as noted above.

4

5

\_\_\_\_\_  
DAVID M. KNUCKEY

6

7 STATE OF \_\_\_\_\_)

8 COUNTY OF \_\_\_\_\_)

9

Before me, \_\_\_\_\_, on this day personally  
10 appeared DAVID M. KNUCKEY, known to me (or proved to me  
11 under oath or through \_\_\_\_\_) to be the person whose  
12 name is subscribed to the foregoing instrument and  
13 acknowledged to me that they executed the same for the  
14 purposes and consideration therein expressed.

15

Given under my hand and seal of office this \_\_\_\_\_  
16 day of

\_\_\_\_\_, \_\_\_\_\_.

17

18

19

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR

20

THE STATE OF \_\_\_\_\_

21

22

23

24

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CAUSE NO. 48914

1  
2 RLB CONTRACTING, INC. \* IN THE DISTRICT COURT OF  
3 \*  
4 \*  
5 V. \* BRAZORIA COUNTY, TEXAS  
6 \*  
7 PORT FREEPORT, \*  
8 FORMERLY KNOWN AS \*  
9 BRAZOS RIVER HARBOR \*  
10 NAVIGATION DISTRICT \* 239TH JUDICIAL DISTRICT  
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## REPORTER'S CERTIFICATION

DEPOSITION OF DAVID M. KNUCKEY

JANUARY 27, 2010

11  
12 I, TOI K. DOWELL, certified Shorthand reporter in and  
13 for the State of Texas, hereby certify to the following:

14 That the witness, DAVID M. KNUCKEY, was duly sworn by  
15 the officer and that the transcript of the deposition is a  
16 true record of the testimony given by the witness;

17 That the deposition transcript was submitted on  
18 February 16, 2010 to the witness or to the attorney for  
19 the witness for examination, signature and return to me by  
20 March 18, 2010;

21 That the amount of time used by each party at the  
22 deposition is as follows:

23 Mr. David Roberts - 3.53

Mr. George T. Wommack, Jr. - 0

1 That pursuant to information given to the deposition  
2 officer at the time said testimony was taken, the following  
3 includes all parties of record:

4 Mr. David Roberts, attorney for Plaintiff  
Mr. George T. Wommack, Jr., Attorney for Defendant

5  
6 I further certify that I am neither counsel for,  
7 related to, nor employed by any of the parties or attorneys  
8 in the action in which this proceeding was taken, and  
9 further that I am not financially or otherwise interested in  
10 the outcome of the action.

11 Further certification requirements pursuant to Rule  
12 203 of TRCP will be certified to after they have occurred.

13 Certified by me this 16 day of February,  
14 2010.

15

16

17

Toi K. Dowell

Toi K. Dowell, CSR #2768

18

Certification Expires 12-31-2011

Associated Court Reporters

19

Firm Registration No. 29

425 Austin Avenue, Ste. 2101

20

Waco, Texas 76701

254-753-3330

21

800-340-5881

22

FURTHER CERTIFICATION UNDER RULE 203 TRCP

23

24 The original deposition was/was not returned to the  
25 deposition officer on \_\_\_\_\_;



1 If returned, the attached Changes and Signature page  
2 contains any changes and the reasons therefor;

3 If returned, the original deposition was delivered to  
4 the Custodial Attorney;

5 That \$ \_\_\_\_\_ is the deposition officer's charges  
6 to the Plaintiff for preparing the original deposition  
7 transcript and any copies of exhibits;

8 That the deposition was delivered in accordance with  
9 Rule 203.3, and that a copy of this certificate was served  
10 on all parties shown herein on \_\_\_\_\_ and filed  
11 with the Clerk.

12 Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
13 2010.



15 *Mr. K. Dowell*

16 *Mr. K. Dowell*

17 *Mr. K. Dowell* 168

Certification Expires 12-31-2011

18 Associated Court Reporters

Firm Registration No. 29

19 425 Austin Avenue, Ste. 2101

Waco, Texas 76701

20 254-753-3330

21 800-340-5881



RE Velasco Terminal Site-Civil Bid Package.txt

From: Thibeaux, Jerry  
Sent: Tuesday, January 23, 2007 6:33 AM  
To: David Knuckey; Goldston, William  
Cc: Don Cheline; Linda Matcheski  
Subject: RE: Velasco Terminal, Site-Civil Bid Package

We like the second option, but were concerned that if other drying agents were used it might be considered a change. Shailendra considers this unlikely, so we would add a Unit Rate price per dry lime, with an estimated quantity of 15,000 tons.

-----Original Message-----

From: David Knuckey [mailto:knuckey@portfreeport.com]  
Sent: Friday, January 19, 2007 3:00 PM  
To: Thibeaux, Jerry; Goldston, William  
Cc: Don Cheline; Linda Matcheski  
Subject: Velasco Terminal, Site-Civil Bid Package

Jerry, William,

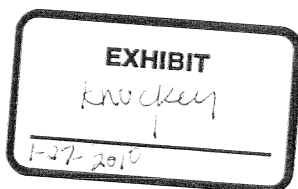
Had a chance to talk to Pete and Phyllis this morning and we decided to hold the construction period to 180 days. This will require a fair amount of lime as a chemical drying agent. I suggest we add a bid item for lime stabilization based on either a cubic yard or square yard, 12" depth basis. The other option is to have them bid on the chemical lime treatment on a per ton of lime at 5% by volume of soil-lime mix basis based on the following assumptions:

1. Assume 30% of excavation will need lime treatment ( $365,000 \text{ CY} \times 0.3 = 109,500 \text{ CY}$ ).

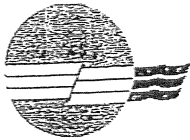
2. Assume 5% lime content by volume ( $109,500 \times 0.05 = 5,475 \text{ CY lime}$ )

This equates to  $(5,475 \text{ CY}) \times (27 \text{ CF/CY}) \times (3.3 \times 62.4 \text{ lbs/CF}) / 2,000 \text{ lbs/ton} = 15,220 \text{ tons}$

Dave Knuckey  
Port Freeport







**GOLDSTON ENGINEERING, INC.**

5850 San Felipe, Suite 650  
Houston, TX 77057  
Phone (713) 977-8291 • Fax (713) 977-7466  
e-mail: [gei@goldstonengr.com](mailto:gei@goldstonengr.com)

A03055-00

May 1, 2008

Port Freeport  
200 West Second Street, 3<sup>rd</sup> Floor  
Freeport, TX 77541

ATTN: DAVID KNUCKEY, DIRECTOR OF ENGINEERING  
RE: RESPONSE TO CONTRACT COMMENT

Dear Sir,

On May 2, 2008 a Notice of Claim was issued by RLB Contracting, Inc. requesting that the Contract Price and schedule be adjusted for delays arising from an April 4, 2008 directive by Port Freeport to cease using pelletized lime. Following our review of the claim and background circumstances, we note the following:

1. RLB's handling of the pelletized lime created a hazardous environmental condition as a result of lime dust blowing over adjacent property (Freeport Launch). Complaints from this property owner brought this condition to Port Freeport's attention, and led to the April 4, 2008 directive to cease using the lime, thereby eliminating the hazard. Port Freeport's action was made necessary by Contractor's failure to comply with Article 4.06 D of the General Conditions, which requires Contractor to immediately stop all work in connection with a hazardous environmental condition.
2. Issues with lime dust creating an environmental hazard had been addressed in a teleconference on August 27, 2007 (see attached minutes). Based on the teleconference, RLB understood that use of pelletized lime would be restricted to favorable wind conditions, that use of water spray for dust control may be needed, and that caution was required regarding the speed of machinery spreading the lime.
3. During an April 9, 2008 meeting, RLB was requested to submit proposals for finishing the job without the use of lime. They were advised not to use pelletized lime, and to stockpile material too wet to compact until it could be worked. There was some discussion that lime slurry could be safely used, but this approach for eliminating the hazard was judged ineffective as a drying agent.
4. On April 29, 2008 RLB was advised that their proposals for finishing the work without the use of lime were not accepted, and they should continue to perform work in accordance with the contract. They could continue using lime provided they did not create a hazardous environmental condition in doing so.

EXHIBIT

Knuckey  
2

Should you have any questions or require any additional information, please call our office at 713-977-8291.

Regards,

GOLDSTON ENGINEERING, INC.

Jerome F. Thibeaux, P.E.  
Senior Project Manager



not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 Reference Points

A. Engineer or Owner shall provide engineering surveys to establish reference points for construction which in Engineer's or Owner's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

~~G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of~~





19. *Engineer*--The individual or entity named as such in the Agreement or the replacement chosen by Owner.

20. *Field Order*--A written order issued by Engineer and approved by Owner which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil,

petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity*--An officer, director, partner, employee, agent, consultant, or subcontractor.

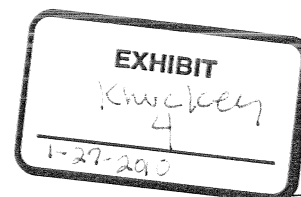
37. *Resident Project Representative*--The authorized representative of Owner or Engineer, as stipulated herein, who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.





REPORT OF DAILY CONSTRUCTION ACTIVITIES

STED FOR: Mr. Don Cheline  
Port Freeport  
P.O. Box 615  
Freeport, TX 77541

PROJECT: New Velasco Terminal  
Site work  
Freeport, TX

TE: July 25, 2007

PSI REPORT NO.: 218-70077-49

MARKS: A PSI representative reported to the above referenced project to monitor construction activities and preform required testing.

The West end of Fill AREA #1, both North and South, has approximately 1" of water standing on it. This is the area that the representative had requested that even if meant forcing water into the existing lift, to go on and seal and make sure the area would drain. The PSI representative felt the risk of losing some strength was worth the gamble in view of the weather forecast. Instead, we had a solid mass of water from the North edge to South edge and West end to the construction fence.

This is not what the PSI representative requested, not what the specifications require, and not what the RLB fill and compaction submittal indicates. This failure is just setting the schedule further back and forcing the use of lime. This combined with the failure to get the full 24" allowed by the Goldston submittal -A03055-00- has seriously impacted work in this area, despite the PSI representative convincing Dr. S.N. Endley to relax PSI's normally rigid tolerances for fear of blowing out this area.

Currently, in Area 1 North side end, we have approximatley 3900 cu. yds. that has been tested and passed. The PSI representative and Bob Lewis with Port Freeport have gone back several times looking of a visible lift and do not see it. The PSI representative also has concerns about whether the 18" placed over the soft area is actually there now or if it has been driven downward.

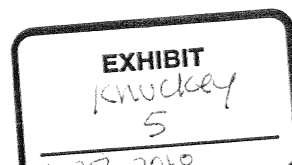
The PSI representative spoke with the RLB representative about these concerns and will get shots to verify elevations as soon as it is feasible.

If you should have any questions, please do not hesitate to contact us at your earliest convenience.

Respectfully Submitted,

Professional Service Industries, Inc.

Tech: Harold Ammons  
Time: 9:30 am - 5:30 pm





## OAKS, HARTLINE & DALY

Houston • Austin • Lake Jackson

June 11, 2009

Ms. Sandra Witte  
Roberts, Roberts, Odefey & Witte  
2206 North Highway 35  
P.O. Box 9  
Port Lavaca, TX 77979

via Certified Mail, RRR

Re: Agreement between Owner and Contractor dated April 19, 2007, between Port Freeport (formerly Brazos River Harbor Navigation District of Brazoria County, Texas), as Owner, and RLB Contracting, Inc., as Contractor, regarding the work on the Brazos River Harbor Navigation District Velasco Terminal Site Civil Project, Project No. 06-06 (the "Contract")

Dear Ms. Witte:

In accordance with your May 7, 2009 letter regarding your return of the two Port Freeport checks totaling \$158,754.99 (one payable to RLB Contracting in the amount of \$141,854.99 and one payable jointly to RLB Contracting, Inc. and Turnkey Electric, Inc. in the amount of \$16,900.00), please find enclosed herewith the reissued checks without the notation of final payment on the stubs. These checks represent the total remaining sums the Port feels it owes on the above-referenced Contract. We fully understand your client has not agreed to Change Order No. 8, nor has it waived its claims under Cause No. 48914, *RLB Contracting, Inc. vs. Brazos River Harbor Navigation District*, nor are we requesting such consent or waiver; the Port is merely trying to pay the uncontested remaining funds to your client. Again, please hold the check for \$141,854.99 until your client executes and returns to me the proper Waiver of Lien attached to my letter of April 7, 2009. The check to RLB Contracting & Turnkey Electric jointly in the amount of \$16,900.00 can be sent immediately by RLB Contracting to Turnkey Electric.

If you have any questions concerning this matter, please do not hesitate to contact me.

Yours truly,

OAKS, HARTLINE & DALY, L.L.P.

*George T. Wommack Jr.*  
GEORGE T. WOMMACK, JR.

GTWJr/ss  
Enclosures

PORT FREEPORT/RLB Contracting/LAWSUIT AGAINST THE PORT  
LETTER to SANDRA WITTE.06.11.09.SEND REISSUED CHECKS

RECEIVED JUN 16 2009

Ms. Sandra Witte  
Roberts, Roberts, Odefey & Witte  
June 11, 2009  
Page 2

cc: Mr. David Knuckey  
Via e-mail

Ms. Phyllis Saathoff  
Via e-mail

Mr. Sagness "Tra" Girouard III  
Girouard & Richardson, PC  
1400 N. Brazosport Blvd.  
Freeport, TX 77541

56892

## PORT FREEPORT

ACCOUNT NO. 00817			VENDOR RLB Contracting		CHECK NO.	CHECK DATE 6/9/2009	
VOUCHER	INVOICE NUMBER	INV. DATE	REFERENCE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
018169		4/9/2009		141,854.99	141,854.99	0.00	141,854.99
						CHECK TOTAL ****141,854.99	

THIS DOCUMENT CONTAINS A SECURITY FEATURE. PLEASE REVERSE SIDE FOR DETAILS.

56892



OPERATING ACCOUNT  
200 West 2nd Street, 3rd Floor  
Freeport, Texas 77541

TEXAS GULF BANK, N.A.  
FREEPORT - CLUTE - ANGLETON  
LAKE JACKSON - WEST COLUMBIA  
FREEPORT, TEXAS 77541

88-1548-1131

CHECK NO.

CHECK DATE

VENDOR NO.

056892

6/9/2009

00817

PAY One Hundred Forty-One Thousand Eight Hundred Fifty-Four and 99/100----- US Dollars

CHECK AMOUNT

\*\*\*\*141,854.99

TO THE RLB Contracting  
ORDER P.O. Box 1739  
OF Port Lavaca, TX 77043  
United States

VOID AFTER SIX MONTHS.

AUTHORIZED SIGNATURE

⑈056892⑈ ⑆113115484⑆ ⑈5000002972⑈

## PORT FREEPORT

56892

ACCOUNT NO. 00817			VENDOR RLB Contracting		CHECK NO. 056892	CHECK DATE 6/9/2009	
VOUCHER	INVOICE NUMBER	INV. DATE	REFERENCE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
018169		4/9/2009		141,854.99	141,854.99	0.00	141,854.99
						****141,854.99	
						CHECK TOTAL	

5689:

## PORT FREEPORT

ACCOUNT NO. 01147			VENDOR RLB Contracting		CHECK NO.	CHECK DATE 6/9/2009	
VOUCHER	INVOICE NUMBER	INV. DATE	REFERENCE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
018170		4/9/2009		16,900.00	16,900.00	0.00	16,900.00
CHECK TOTAL*****16,900.00							

THIS DOCUMENT CONTAINS MICROSECURITY FEATURES. SEE REVERSE SIDE FOR DETAILS.

5689:



OPERATING ACCOUNT  
200 West 2nd Street, 3rd Floor  
Freeport, Texas 77541

TEXAS GULF BANK, N.A.  
FREEPORT - CLUTE - ANGLETON  
LAKE JACKSON - WEST COLUMBIA  
FREEPORT, TEXAS 77541

88-1548-1131

CHECK NO.

CHECK DATE

VENDOR NO.

056893

6/9/2009

01147

PAY Sixteen Thousand Nine Hundred and 00/100----- US Dollars  
CHECK AMOUNT  
\*\*\*\*\*16,900.00

TO THE RLB Contracting  
ORDER & Turnkey Electric  
OF P.O. Box 1739  
Port Lavaca, TX 77043  
United States

VOID AFTER SIX MONTHS

AUTHORIZED SIGNATURE

⑈056893⑈ ⑆113115484⑆ ⑈5000002972⑈

## PORT FREEPORT

5689:

ACCOUNT NO. 01147			VENDOR RLB Contracting		CHECK NO. 056893	CHECK DATE 6/9/2009	
VOUCHER	INVOICE NUMBER	INV. DATE	REFERENCE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
018170		4/9/2009		16,900.00	16,900.00	0.00	16,900.00
CHECK TOTAL*****16,900.00							





Don Cheline

EXHIBIT

1-27-2010

From: David Knuckey  
 Sent: Wednesday, April 23, 2008 2:11 PM  
 To: William.Goldston@CH2M.com  
 Cc: Joseph.Scarborough@CH2M.com; Jerry.Thibeaux@CH2M.com; Don Cheline; Linda Matcheski  
 Subject: RE: RLB Request

William,

I just sat down with Don and went over the seven items submitted to the Port by RLB Contracting on April 10th. First off, I wasn't aware we had this many issues out there pending. Some of these are fairly straightforward and should have been responded to and put to bed by now. The other ones are more complicated and will need more time.

This is backwards from the General Conditions, but here are my comments/suggestions anyway!

Item 1 - Addition of a 2" water line and meter for use by Kirby Marine (\$8,452.50 increase). I will check with Phyllis but I believe our response will be if Kirby wants the water line they can pay for it. *Reject.*

Item 2 - Deletion of 18" RCP and associated slope paving (\$7,256.00 credit). This equates to an installation credit of \$106.25/LF for the RCP. The proposal does not address the issue of ownership of the 48 LF of 18" RCP nor of the installation time. I'm assuming the Port will take possession of the RCP and the Contractor will NOT give us back 3 calendar days. Subject to clarification of these points, suggest recommending this item be approved.

Item 3 - Deletion of 108 LF of 30" RCP and associated slope paving (\$15,850.00 credit). This equates to an installation credit of \$78.70/LF for the RCP which is slightly less than what is being offered in Item 3 above. The proposal does not address the issue of ownership of the 108 LF of 30" RCP nor of the installation time. I'm assuming the Port will take possession of the RCP and the Contractor will NOT give us back 5 calendar days. Subject to clarification of these points, suggest recommending this item be approved.

Item 4 - Deletion of placement of crushed limestone base on Dock Access Road (\$30,800.00 credit). I calculate the rock tonnage as,

$(14' / 12) \times (41') \times (891') / 27 \times 1.8 \text{ tons/CY} = 2,800 \text{ tons}$ , NOT 1,800 tons.

*Joseph came up with \$67,000 credit*

The labor credit is extremely low. The Contractor does not include a water truck nor layout and control. Based on recent contracts, the labor cost per ton of limestone has averaged \$4.25/ton. Credit should be more in the range of,

$(2,800 \text{ tons} @ \$15.00/\text{ton}) + (2,800 \text{ tons} @ \$4.25/\text{ton}) = \$53,900.00$

In my opinion, those are the easy ones.

Now for the more interesting ones!

Item 5 - Deletion of lime and air drying of 75,000 CY (\$17,224.35 credit and 105 day increase in contract time). I apologize but this does not rise to the level of a comment. Please instruct the Contractor to comply with the Contract and if that requires the use of chemical lime as a drying agent the Owner agrees to pay for it.

Item 6 - Deletion of replacement of 70 acres of topsoil (\$27,000.00 credit). Technical Specifications, Section 02230 - Site Clearing does not address unit prices. The credit equates to \$386.00 per acre. This tells me the Contractor wants \$2,614.00 per acre to remove and stockpile the topsoil ( $\$3,000.00 - 386.00 = \$2,614.00$ ). If the Contractor were to offer a 70-30 split (70% to remove and stockpile and 30% to place and spread) ( $\$2,100.00 - \$900.00$ ) we could consider a credit. I suggest we start by offering him a ~~60-40~~ split and see where this goes

*Work on a per Acre price.*

*50-50*

4/23/2008

Item 7 - Deletion of 70 acres of hydromulch (\$68,250.00 credit). This equates to \$975.00 per acre. The Contractor provided two unit prices for hydromulching in his bid; \$2,000.00 per acre for "permanent" and \$1,500.00 for temporary" hydromulching. Suggest offering the Contractor the lower of the two figures (\$1,500.00 per acre) less 20% for overhead and profit, even though the General Conditions, Article 12.01.C.2.(a) or (b) limit the Contractor's fee for overhead and profit to 15%.

Please review my comments and then let's talk.

David M. Knuckey, P.E.  
Director of Engineering & Construction  
Port Freeport  
office: 979-233-2667, extension 4257  
fax: 979-233-4696  
mobile: 979-239-8003

---

**From:** William.Goldston@CH2M.com [mailto:William.Goldston@CH2M.com]  
**Sent:** Wednesday, April 23, 2008 10:19 AM  
**To:** David Knuckey  
**Cc:** Joseph.Scarborough@CH2M.com; Jerry.Thibeaux@CH2M.com  
**Subject:** RLB Request

David:  
I'll be at your office tomorrow for the Capital Planning Mtg and the Commission mtg. Do you have time to discuss the RLB proposal or do you want to wait?

**William Goldston, P.E.**  
President  
**Goldston Engineering, Inc.**  
Houston Phone: 713-977-8291, ext 187  
Corpus Phone: 361-888-8100, ext 187  
Cell: 713-828-5701  
e-mail: [w.goldston@goldstonengr.com](mailto:w.goldston@goldstonengr.com)  
Web site: [www.goldstonengr.com](http://www.goldstonengr.com)

4/23/2008

DE DLR 04622



**Article 4 - CONTRACT PRICE:**

**OWNER** shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents in current funds as follows:

**TOTAL PRICE \$6,938,000.00**

Six Million Nine Hundred Thirty Eight Thousand Dollars and No Cents (WORDS)

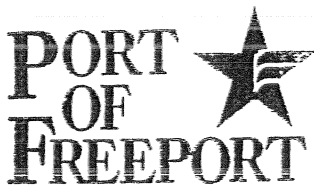
The above total price includes the cost of the unit rate items listed below. In the unit rates, the Bidder shall provide an all-in rate for adjusting the price of a work item should the quantity be adjusted as a result of a change in the scope of work, or the actual quantity differ from the quantity stipulated as a basis of the bid. If the Bidder notes any variances from the estimated quantities, he shall use the stipulated estimated quantities for his Base Bid and shall advise the Owner of such variances.

**UNIT RATES**

ITEM	DESCRIPTION	UM	QUAN- TITY	UNIT PRICE	TOTAL PRICE
1	Excavation, transport, placement and compaction of fill material in designated areas on site (unit price is based on excavation material). *	CY	365,000	\$ 7.00	\$2, 555,000.00
2	Removal, stockpiling and replacement of the top 6-inches of topsoil from backlands areas on the site.	Acres	73	\$3,000.00	\$219,000
3	Permanent hydromulching of erosion control grasses in backlands area.	Acres	73	\$2,000.00	\$146,000
4	Temporary hydromulching of erosion control grasses in backlands area.	Acres	30	\$1,500.00	\$45,000
5	Placement of 8" ACB erosion protection revetment in barge fleeting area.	SF	65,280	\$13.50	\$881,280
6	Pelletized Quicklime drying agent (material only)	Ton	15,000	\$105.00	\$1,575,000.00
7	Mixing of drying agent in soil to be treated	CY	110,000	\$2.00	\$220,000.00

\* Material excavated and stockpiled, but not placed and compacted shall valued at 50% of the unit price for progressive payment purposes.





BRAZOS RIVER HARBOR  
NAVIGATION DISTRICT

P.O. Box 615  
Freeport, Texas 77541  
(409) 233-2667 • (713) 757-1468

PURCHASE ORDER NO. 7198

VENDOR CODE

purchase order

TO:

RLB Contracting  
P.O. Box 1739  
Port Lavaca, Texas 77043

SHIP TO:

Port Freeport  
200 West 2nd Street, 3rd Floor  
Freeport, Texas 77541  
Attn: Engineering Department

P.O. DATE	SHIP VIA	F.O.B.	TERMS
7/29/09			

QTY. REQ.	ITEM NO.	DESCRIPTION	UNIT COST	EXTENDED COS
		Change Order No. 9 for the Velasco Terminal Site/Civil Project		
		<i>Velasco Terminal Site/Civil Project No. 06-06</i>		
		<i>Original Purchase Order No. 6300</i>		
		Purchase Order Amount: (Not to Exceed)		\$89,838.00
		Approved by Board Action July 23, 2009		

EXHIBIT

Knuckey  
8

1-27-200

CIP-Docks Velasco Terminal  
1813-00-0701

2003

Ordered by

Authorized by





CONSTRUCTION PROGRESS MEETING AGENDA  
PORT FREEPORT, TEXAS  
VELASCO TERMINAL SITE CIVIL PROJECT

Project: Velasco Terminal Site Civil Project – GEI PN: A03055-00; POF PN: 06-06

Date/Time: September 25, 2007, 2:00 p.m.

Location: Port Freeport Operations Building Conference Room, Freeport, Texas

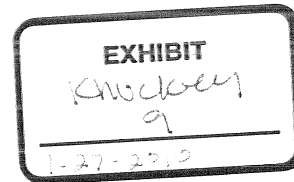
Owner: Port Freeport, Texas  
P.O. Box 615  
Freeport, Texas 77542-0615  
Director of Engineering – David Knuckey, P.E.  
(979) 233-2667/4257

Engineer:

Goldston Engineering, Inc.  
5850 San Felipe, Suite 650  
Houston, Texas 77057  
Project Manager: Wm Goldston, P.E.  
(713) 977-8291 Ext. 187

Contractor:

RLB Contracting, Inc  
410 Broadway St  
Port Lavaca, TX, 77979  
Project Manager: Randy L. Boyd  
(361)-552-2104



I. Review Action Items from Progress Meeting No. 3

- Rotate fleeting office and add 2-inch waterline to barges near the fleeting office.
- Remove light poles from the discharge channel to the parking area.
- Make a recommendation concerning the organics found in the soil on the north side of the discharge channel.
- Work with Contractor to resolve lime dust nuisance during mixing.

II. Address Kirby Corp Concerns

- *SLIPPED TO*  
BUILDING FOUNDATION SCHEDULE? DECEMBER
- DOCK BARGE PILING? - NONE. KIRBY TO SUPPLY.

III. Construction Progress

- Discuss issues with Manitowoc 4500. *UP & RUNNING.*
- Shoreblock mats damaged/repared. Manufacture's representative to be on-site during installation. *AGREED TO MAKE REPAIRS. ENGINEER TO WORK WITH CONTRACTOR, NOT VENDOR*
- Electrical design changes requested by subcontractor due to material availability approved. - *DUK*
- Rotating fleeting office 90 degrees.
- Temporary Channel Crossing ~~Permit~~ submitted and in review. -
- Discuss soils report concerning recommendations for ~~XXXXXXXXXX~~ NONE

IV. Review Construction Schedule

- Change Order No. 3 extends contract completion date to December 2, 2007. *(12 DAYS IN SEPT.)*
- RLB to submit a revised construction schedule with change orders incorporated. *By Oct. 5<sup>TH</sup>*
- Discuss result of considering 24 hour shifts. *LOOKING AT IT.*
- Discuss Maximum volume of haul per day less than 4,000 cy.

*LOGISTICALLY THERE IS NO PLACE TO PUT ADDITIONAL EQUIPMENT.*

## V. Application for Payment

- Pay request concerns about materials on-hand. Contractor notified of request for additional breakdown of shipping and handling costs.

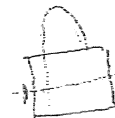
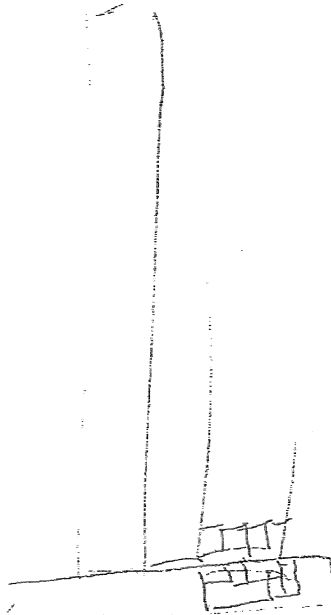
## VI. Construction Submittals

- No new construction submittals.

Oct. 23<sup>rd</sup> 2:00pm

9/11:

9/5:





## Port Freeport - Berth 7 - Site Civil Claim

TO: William Goldston  
Jerry Thibeaux

COPIES: Joseph Scarborough

FROM: Jeff Ely

DATE: July 27, 2008

### Engineer's Responsibility – Claims Under Contract Documents

1. Engineer responds to Contractor's claim within 30 days of receiving the final claim submittal.
2. Disposition of claim should be:
  - a. Deny the claim in whole or in part,
  - b. approve the claim, or,
  - c. state that the Engineer is unable to resolve the claim if it is inappropriate for the Engineer to do so. This disposition will be treated as a denial of the claim.
3. If the Engineer does not respond within 30 days, it will be deemed a denial.

It is important to note the Engineer's written action is binding on the Owner and Contractor unless one of the parties invokes the dispute resolution procedure within 30 days of the Engineer's decision.

The above responsibilities and procedures are from Article 10 of the General Provisions.

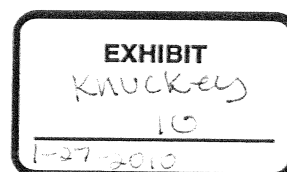
### Contractor's Claim

#### Basis

The basis for the Contractor's claim is that the Port of Freeport directed the Contractor to stop using pelletized lime on the site and instead stockpile the dredge material from April 4, 2008 to June 17, 2008. As such, the claim asserts the Contractor should be allowed 71 additional days on the contract and should be compensated for all equipment and operations that were impacted during this period.

#### Methodology

The Contractor has determined that he is not able to accurately calculate his damages under this claim and has therefore submitted a theoretical cost of all affected equipment and personnel on the site less the amount approved for payment under the dredging contract item. This theoretical cost includes the following:



1. Hourly equipment rental rates using the Holt Rental Schedule for each piece of impacted equipment.
2. Operator hourly average raw rates (\$16/hour) plus overtime, fringe and per diem.
3. 15% markup for each equipment hourly rate for maintenance, overhead, and profit.
4. Allocation for support equipment and personnel.

## Engineer's Evaluation of Claim

### Basis

The contract specifications Section 02300 "Earthwork," Subsection 3.16 "Lime Stabilization" refer to TxDOT standard specifications Item 260 (attached). Item 260, Subsection 260.4 "Construction," paragraph C, "Application of Lime," states, in part:

Minimize dust and scattering of lime by wind. Do not apply lime when wind conditions, in the opinion of the Engineer, cause blowing lime to become dangerous to traffic or objectionable to adjacent property owners.

Per the above quoted specification, the direction of the Port contained in the file "08\_24\_07 meeting notes.doc" (attached) under the heading "Lime Stabilization Problem - Lime Dust Cloud" fall fully within the scope of the contract documents

However, in a subsequent meeting on April 9, 2008, the Port directed the Contractor to provide a proposal to "haul material into Area 3 and come back in 3 months and re work the material and de-mob and mob" (see attached file 04\_09\_08 meeting notes.doc). This direction is for work that is outside the scope of the contract and should be paid for as a Change Order per the contract general conditions Section 10.01, "Authorized Changes in the Work."

As such, the Contractor's basis for claim is sound and a Change Order should be negotiated.

### Methodology

The methodology for cost determination is clearly set forth in the Contract General Conditions, Article 11, "Cost of the Work, Allowances; Unit Price of Work." The method used by the Contractor to calculate the cost of the work does not conform to the Contract Documents. Specifically, the following points should be considered:

1. Payment for the actual costs incurred in stockpiling the material is allowed under the contract. However, a theoretical calculation of what the work might have cost under a set of assumptions is not an allowable cost calculation method.
2. The costs that are allowable are as follows (General Conditions, Article 11):
  - a. Actual payroll costs of workers directly and indirectly employed in stockpiling the material according to itemized time sheets.
  - b. Actual per diem costs for employees in item "a" above.
  - c. Actual maintenance cost of equipment used for stockpiling equipment.

- d. Actual rental cost of equipment used for stockpiling material. Rental cost does not apply to Contractor's owned equipment.
- e. Actual fuel costs for equipment used for stockpiling material.

### Engineer's Recommendation

The Contractor has claimed a total of \$732,532.91 for the Port's directive to stockpile 25,778 cubic yards of material on the site; which calculates to a unit price of \$28.42 per cubic yard. This is well above the unit cost that would be expected within the current commercial climate. In the event the Contractor is unable to substantiate actual cost incurred for this work (as mentioned in his notice), our recommended methodology for calculating payment is as follows:

1. The original series of actions contemplated for performing the work is as follows:
  - a. Dredge soil.
  - b. Load soil.
  - c. Haul soil.
  - d. Spread soil.
  - e. Spread quicklime.
  - f. Mix soil and quicklime.
  - g. Compact mixture.
2. The series of actions as actually performed is
  - a. Dredge soil.
  - b. Load soil.
  - c. Haul soil.
  - d. Stockpile soil.
  - e. Load soil.
  - f. Haul soil.
  - g. Spread quicklime.
  - h. Mix soil and quicklime.
  - i. Compact mixture.
3. It is apparent in studying these two sequences that the extra work performed by the Contractor is limited to stockpiling soil, loading soil from the stockpile, and hauling soil to the spreading location. This is the extent of work that should be paid for by change order.

4. The unit price paid for "Excavation, transport, placement, and compaction of fill material in areas designated on site" is \$7.00 per cubic yard. Since the work contemplated in the unit price for "Excavation, transport, placement, and compaction of fill material in areas designated on site" is greater than the extra work performed by the Contractor (Item 3 above), it is evident that the cost payable to the Contractor should have an upper limit of \$7.00 per cubic yard.

Per the methodology above, it is recommended the Port enter into a negotiation with the Contractor to execute a change order for stockpiling the material for an amount not to exceed \$180,446.

It should be further noted that while the Port may elect to grant the 71 additional contract days requested by the Contractor, the Contract Documents do not allow any monetary payment to the Contractor for the extended schedule unless incurred costs are substantiated.





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## OAKS, HARTLINE & DALY

Houston • Austin • Lake Jackson

February 19, 2010

Port Freeport  
Attn: Dave Knuckey  
200 West Second Street, 3rd Floor  
Freeport, TX 77541

Re: Cause No. 48914; In the 239<sup>th</sup> Judicial District Court of Brazoria County, Texas  
RLB Contracting, Inc. vs. Port Freeport, formerly known as Brazos River Harbor  
Navigation District

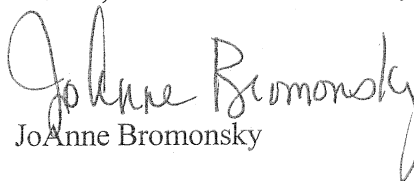
Dear Dave:

Enclosed herewith is a copy of your deposition taken on January 27, 2010 for your review. You will also find enclosed a "changes and signature" page to be used for any changes, additions or corrections you may have to your deposition and the page marked with a "Sign Here" sticker is to be signed by you before a Notary Public. Please return the original "changes and signature" pages back to me on or before Friday, March 12, 2010.

Please do not hesitate to contact me or Mr. Wommack if you have any questions.

Yours truly,

OAKS, HARTLINE & DALY, L.L.P.

  
JoAnne Bromonsky

Clients/Port Freeport/RLB/Lawsuit Against the Port/  
Deposition/Knuckey/Letter to D Knuckey re Deposition

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## CHANGES AND SIGNATURE

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WITNESS NAME: David M. Knuckey DATE OF DEPOSITION: 27 JAN 10

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PAGE

LINE

CHANGE

REASON

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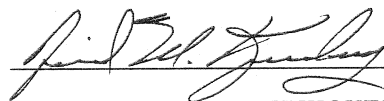
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1 I, DAVID M. KNUCKEY, have read the foregoing  
2 deposition and hereby fix my signature that same is true and  
3 correct, except as noted above.  
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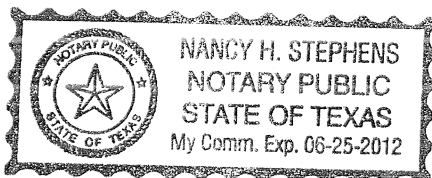
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DAVID M. KNUCKEY

6  
7 STATE OF Texas )  
8 COUNTY OF Brazoria )

9 Before me, David M. Knuckey, on this day personally  
10 appeared DAVID M. KNUCKEY, known to me (or proved to me  
11 under oath or through \_\_\_\_\_) to be the person whose  
12 name is subscribed to the foregoing instrument and  
13 acknowledged to me that they executed the same for the  
14 purposes and consideration therein expressed.  
15

16 Given under my hand and seal of office this 26<sup>th</sup>  
day of  
March, 2010.



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21 NOTARY PUBLIC IN AND FOR  
22 THE STATE OF Texas  
23  
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# PORT FREEPORT<sup>SM</sup>

## THE COAST IS CLEAR

200 W. SECOND ST., 3<sup>rd</sup> FL. • FREEPORT, TX 77541  
(979) 233-2667 • 1 (800) 362-5743 • FAX: (979) 233-5625

### LETTER OF TRANSMITTAL

TO: Mr. George T. Wommack  
Wommack Law Firm  
P.O. Box 420  
(7 West Way Ct., Ste. A)  
Lake Jackson, TX 77566

DATE: March 29, 2010  
SUBJECT: Velasco Terminal Site Civil  
Project 06-06

#### WE ARE SENDING YOU:

<input checked="" type="checkbox"/> <b>ATTACHED</b>	<input type="checkbox"/> ORIGINALS	<input type="checkbox"/> EXHIBITS
<input type="checkbox"/> PURCHASE ORDER	<input type="checkbox"/> DRAWINGS	<input type="checkbox"/> PLANS
<input type="checkbox"/> CHANGE ORDER(S)	<input type="checkbox"/> SPECIFICATIONS	<input type="checkbox"/> INVOICES

ITEM NO.	DATE	COPIES	DESCRIPTION
1	3-26-2010	1(Original)	Deposition, Cause No. 48914, for the above referenced project.

#### THESE ARE TRANSMITTED AS INDICATED BELOW:

<input type="checkbox"/> FOR YOUR USE	<input type="checkbox"/> FOR YOUR APPROVAL
<input checked="" type="checkbox"/> AS REQUIRED	<input type="checkbox"/> FOR SIGNATURE
<input type="checkbox"/> FOR REVIEW	<input type="checkbox"/> RESUBMITTING
<input type="checkbox"/> FOR YOUR INFORMATION	

REMARKS: Please advise if you should have any questions (979) 233-2667 ext. 4317.

Sincerely,

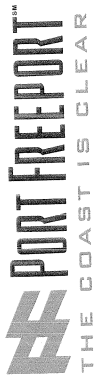


Nadia Bowers  
Engineering Clerk

cc: Phyllis Saathoff, Managing Director  
David M. Knuckey, P.E. Director of Engineering & Construction, Port Freeport

RECEIVED  
3-29-10

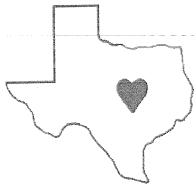
PORT COMMISSION



200 W. Second St., 3rd Fl.  
Freeport, TX 77541

Mr. George T. Wommack  
Wommack Law Firm  
P.O. Box 420  
(7 West Way Ct., Ste. A)  
Lake Jackson, Tx 77566

Hand Deliver



*ACR*

## ASSOCIATED COURT REPORTERS

*Serving The Entire Great State of Texas  
Offices in Waco and Houston*

February 15, 2010

Mr. George Wommack  
OAKS HARTLINE, DALY  
7 West Way Court  
Lake Jackson, TX 77566

RE: Cause No. 48914  
In The 239th Judicial District of Brazoria County, Texas  
RLB Contracting Inc. v. Port Freeport fka Brazos River Harbor Navigation District

Oral Deposition of **David Knuckey** taken on **January 27, 2010**

Mr. Wommack:

Enclosed please find the following:

1. Copy of the deposition transcript, with exhibits and word index;
2. Erata Sheet for the signature of David Knuckey; and
3. Invoice.

The e-tran you requested was sent to you on February 15, 2010.

Please have your client read his transcript, using the Corrections and Signature Page for any changes, additions or corrections. Please note that the page marked with a "Sign Here" sticker is to be signed by your client before a Notary Public. After this has been done, please return the signed Erata Sheet to this office before March 18, 2010.

I appreciate your cooperation in this matter, and if you should have any questions, please feel free to contact our office.

Sincerely,

**Associated Court Reporters**

*Evelyn Guest*

Evelyn Guest  
[evelyn@acrtx.com](mailto:evelyn@acrtx.com)

Enclosures

cc: Mr. David Roberts



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## CHANGES AND SIGNATURE

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WITNESS NAME: \_\_\_\_\_ DATE OF DEPOSITION: \_\_\_\_\_

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PAGE	LINE	CHANGE	REASON
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Copy  
Original  
Sent to Dave/K.

1 I, DAVID M. KNUCKEY, have read the foregoing  
2 deposition and hereby fix my signature that same is true and  
3 correct, except as noted above.

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\_\_\_\_\_  
DAVID M. KNUCKEY

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7 STATE OF \_\_\_\_\_)

8 COUNTY OF \_\_\_\_\_)

9 Before me, \_\_\_\_\_, on this day personally  
10 appeared DAVID M. KNUCKEY, known to me (or proved to me  
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Given under my hand and seal of office this \_\_\_\_\_  
16 day of

\_\_\_\_\_, \_\_\_\_\_.

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NOTARY PUBLIC IN AND FOR

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THE STATE OF \_\_\_\_\_

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